IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.34578 of 2007

1. DURGESH MISHRA SON OF SUBHAS MISHRA, RESIDENT OF VILLAGE-CHUPCHUPWA, P.S.- MAIRWA, DISTRICT- SIWAN
2. SHIV SHANKAR UPADHAYA @ DEEPAK SON OF RAMA SHANKAR UPADHAYA, RESIDENT OF BHARTAI, POLICE STATION-DHANAUTI MATH, P.S.- MUFFASIL, DISTRICT-SIWAN
3. MARKANDEY TIWARY SON OF LATE KAILASH TIWARY, RESIDENT OF SOHRAI, POLICE STATION- GUTHNI, DISTRICT- SIWAN.

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Versus

1. THE STATE OF BIHAR
2. MADAN MOHAN TIWARY S/O LATE RAM BAHADUR TIWARY, R/O VILLAGE-SOHRAI, P.S. GUTHANI,DISTT-SIWAN ----- ---- **OPP.PARTIES**

For the petitioners : Mr. Ranjan Kumar Dubey, Advocate
For the State : Mr.Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2 : M r. Naresh Kumar Dixit, Advocate

O R DE R

Three of the F.I.R. named accused of Guthni P.S.Case no.10 of 2007 have preferred this application for the quashing of the order dated 30.4.2007 passed therein by the learned Chief Judicial Magistrate, Siwan, whereunder he has taken cognizance of offences under Sections 363,366A/34 I.P.C.

The informant, one Madan Mohan Tiwary, impleaded herein as Opp.Party no.2, submitted a written report inter alia alleging that the four persons named therein, including the petitioners, had taken away his minor daughter, Madhuri alias Gudia , aged about 15 years on 24.2.2007 at around 8 P.M. with intent to force her into

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marriage.

Assailing the impugned order it was sought to be submitted by the learned counsel for the petitioner that from perusal of the report of the Medical Board examining the victim and the statement of the victim girl given under Section 164 Cr.P.C., it would be apparently clear that the victim girl was neither a minor nor had been kidnapped and notwithstanding these glaring facts, the police had submitted a charge sheet and the court had taken cognizance mechanically. In this connection, it was pointed out that the Medical Board had assessed the age of the victim being between 18 to 19 years and in the statement under Section 164 Cr.P.C. she had stated her age as 21 years which was also the age assessed by the learned Magistrate recording her statement. It further transpires from her statement that she had not been kidnapped and had left the parental home of her own accord and it was she who had taken Durgesh Mishra with her and had solemnized their marriage on 5.3.2007 at the Budiya Mai temple. She had also expressed her desire to go with her parents –in-law and not with her parents. It was further submitted that both Durgesh and she were living together ever since.

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The learned counsel for Opp.Party no.2 has not been able to rebut the submissions of his adversary except for stating that the girl was a minor as stated by her informant father and the father was the best person who could have stated about the daughter's correct age. However, no documentary proof of the girl being a minor has been furnished.

I have perused the statement of the victim girl given under Section 164 Cr.P.C. and the same appears to support the submissions of the learned counsel for the petitioners. There is another aspect of the matter. A Bench of this Court while considering the quashing application filed by the father, Madan Mohan Tiwary , being Cr.Misc.No.46576 of 2007 claiming for declaring his daughter to be a minor , dismissed the same vide order dated 12.2.2008 holding the girl to be a major.

In the aforesaid circumstances, the prosecution of the petitioners would be an abuse of the process of the court. Accordingly, the impugned order so far as the petitioners are concerned is hereby quashed and the application is allowed.

(Abhijit Sinha, J)

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Patna High Court, Patna
Dated :the 20th November,2008
Nawal Kishore Singh/ A.F.R.